U.S. Small Business Administration

If you have any questions regarding this report, please contact SBA's FOIA Chief Oreoluwa Fashola at oreoluwa.fashola@sba.gov.

Content of Fiscal Year 2023 Chief FOIA Officer Reports

(High-Volume Agencies)

Eric S. Benderson, Associate General Counsel for Litigation & Claims, Office of General Counsel

(SBA Chief FOIA Officer)

Section I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS

The guiding principle underlying DOJ's FOIA Guidelines is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

A. FOIA Leadership

1. The Freedom of Information Act (FOIA) requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level?

Yes

2. Please provide the name and title of your agency's Chief FOIA Officer.

Eric S. Benderson, Associate General Counsel for Litigation & Claims, Office of General Counsel

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

N/A

B. Presumption of Openness

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

No

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a Glomar response. With respect to these responses, please answer the below questions:

In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a Glomar response?

Yes

If yes, please provide:

the number of times your agency issued a full or partial Glomar response (separate full and partial if possible);

0

the number of times a Glomar response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).

0

If your agency does not track the use of Glomar responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved.

N/A

6. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

N/A

Section II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION

The Attorney General's FOIA Guidelines provide that "[e]nsuring fair and effective FOIA administration requires . . . proper training, and a full understanding of FOIA obligations by the entire agency workforce." The Guidelines reinforce longstanding guidance to "work with FOIA requesters in a spirit of cooperation." The Attorney General also "urge[s] agency Chief FOIA Officers to undertake comprehensive review of all aspects of their agency's FOIA administration" as part of ensuring fair and effective FOIA administration.

A. FOIA Training

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

In August 2022, the Office of Information Policy (OIP) provided FOIA training for SBA's staff.

SBA also provides web based FOIA training.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

Yes.

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

OIP conducted a FOIA overview virtual training for all SBA personnel. Additionally, SBA's Web-based training module provides a general introduction and overview of FOIA. SBA FOIA Coordinators with additional FOIA duties were able to attend the Virtual Introduction to the Freedom of Information Act Seminar.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

91%

5. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

The SBA FOIA Office provides email notifications Agency-wide regarding FOIA trainings through the SBA Daily newsletter. Also, David Fishman, Senior Legal Counsel for FOIA

and Privacy Act, provides briefings to senior managers regarding their responsibilities under the FOIA.

B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

No.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

Yes, on many occasions the SBA FOIA Office in partnership with the Office of General Counsel (OGC) have assisted various program offices have contacted requesters to clarify or narrow the scope of the request, in particular complex requests made by news media and non-profit advocacy organizations such as the Washington Post, Wall Street Journal, Bloomberg, The Project on Government Oversight (POGO), and American Oversight.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

Estimate - 1500

C. Other Initiatives

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

Yes, the FOIA Office is currently in process of recruiting a FOIA Specialist and is onboarding a contract FOIA Specialist as well. the Office of Capital Access (OCA) has hired a second full-time FOIA Specialist, the Office of Inspector General (OIG) has hired a full-time FOIA Specialist as well as a Paralegal who has part-time FOIA duties.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

FOIAOnline/FOIAXpress Case Management reporting is being provided to the program offices with highest case load, OCA, OIG, ODA, to assist them with reducing their backlog.

12. Optional -- If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

No

Section III: PROACTIVE DISCLOSURES

The Department of Justice has long focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

In consultation with the Office of General Counsel (OGC) and the program offices, identify frequently requested records that are of importance to the public, such as loan data, congressional correspondence, etc.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

The Agency's most significant proactive disclosure postings are SBA's complete loan level 7(a) and 504 data sets and data dictionary from January 1, 1990, to present found here:

https://www.sba.gov/about-sba/sba-performance/open-government/foia/frequently-requested-records/sba-7a-504-loan-data-reports

These data sets represent the agency's most frequently requested information.

In addition, SBA has also posted data from the Paycheck Protection Program:

https://sba.box.com/s/5myd1nxutoq8wxecx2562baruz774si6

SBA has also posted information on various funding programs authorized by the CARES Act for small businesses:

Economic Injury Disaster Loans (EIDL)

https://www.sba.gov/document/report-covid-19-eidl-reports-2020

https://www.sba.gov/document/report-covid-19-eidl-advance-reports-2020

https://www.sba.gov/document/report-covid-19-eidl-advance-reports-2020

https://www.sba.gov/document/report-covid-19-eidl-reports-2022

https://data.sba.gov/dataset/covid-19-eidl

Restaurant Revitalization Fund

https://data.sba.gov/dataset/rrf-foia

Shuttered Venue Operators Grant

https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant/svog-data

3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?

Yes

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

The Office of Communications and Public Liaison (OCPL) which is responsible for maintaining www.sba.gov, continuously evaluates agency websites and provides guidance for improvement. OCPL recently assisted our office to make the SBA FOIA web page in alignment with the plain language standard.

https://www.sba.gov/about-sba/open-government/about-sbagov-website/accessibility

https://www.sba.gov/about-sba/open-government/foia

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

Yes, for records that have not been previously disclosed OGC does an assessment prior to posting to ensure sensitive data is not released.

The Office of Capital Access (OCA) updates loan data on a quarterly basis.

Section IV: Steps Taken to Greater Utilize Technology

A key component of FOIA administration is using technology to make information available to the public and to gain efficiency in FOIA processing. The Attorney General's FOIA Guidelines emphasize the importance of making FOIA websites easily navigable and complying with the FOIA.gov interoperability requirements. Please answer the following questions to describe how your agency is using technology to improve its FOIA administration and the public's access to information.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

Yes

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

In FY 23, SBA has transitioned to using FOIAXpress for its case management.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

OGC is using Relativity to assist the Agency with email searches.

4. OIP issued guidance in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

Yes.

5. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov?

No.

6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2022.

Due staffing shortages, time was not devoted to completing the quarterly reports, however we are in the process of recruiting a FTE and have brought on a contractor and envision that all quarterly reports will be posted by the end of the year.

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

https://data.sba.gov/dataset/foia-annual-report-data-files

8. In February 2019, DOJ and OMB issued joint Guidance establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

Yes

Section V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS

The Attorney General's FOIA Guidelines instruct agencies "to remove barriers to requesting and accessing government records and to reduce FOIA processing backlogs." Please answer the following questions to describe how your agency is removing barriers to access, improving timeliness in responding to requests, and reducing FOIA backlogs.

A. Remove Barriers to Access

Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Has your agency established alternative means of access to first party requested records outside of the FOIA process?

Yes,

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

Once a requesters identity has been verified, certain documents in loan files can accessed outside of FOIA such individual loss reports.

B. Timeliness

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report.

76

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

Remind program offices to adjudicate requests for expediated processing 5 days after the request has been assigned.

5. Does your agency utilize a separate track for simple requests?

Yes, 60 days

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

No

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

No

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

56%

9. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

N/A

C. Backlogs

BACKLOGGED REQUESTS

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

Yes

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

N/A

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog.

N/A

13. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

6%

BACKLOGGED APPEALS

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

No

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

Yes

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals

- A loss of staff

Other reasons – This Fiscal Year our office procured a new FOIA Case Management System, and during the process we were down 1 FTE.

17. If you had an appeal backlog, please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

34%

D. Backlog Reduction Plans

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 were asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

Yes, the FOIA Office provided the program offices with the highest backlog a monthly report, additionally, requests that could processed outside of FOIA were redirected.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

N/A

E. Reducing the Age of Requests, Appeals, and Consultations

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

No

21. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

2

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

N/A

TEN OLDEST APPEALS

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

Yes.

24. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

N/A

25. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

N/A

TEN OLDEST CONSULTATIONS

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

Yes

27. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

N/A

E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2023.

Steps have been taken to reduce the oldest requests, appeals, and consultations. Additional resources have assisted in reducing the appeals and requests backlogs. Additionally, recruitment for a FTE for the FOIA Office is taking place and implementation of FOIAXpress has been onboarded.

24. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.

N/A

F. Additional Information about FOIA Processing

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency's overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

Yes, however, litigation has not impacted FOIA processing. SBA is ongoing litigation with the American Small Business League (ASBL) over fees and fee category.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency's FY22 raw data).

3